(35038)

OCT 4 1956

JOHN T. FEY, Clerk

Supreme Court of the United States

October Term, 1956

No. 378

MARY I. DANIMAN, MEYER CASE, LOUIS COHEN, HENRY F. MINS, LOUIS RELIN, LOUIS SPINDELL, IRVING GLUCKSMAN and MORRIS SELTZER,

Petitioners,

against

THE BOARD OF EDUCATION OF THE CITY OF NEW YORK,

Respondent.

VERA SHLAKMAN, BERNARD F. RIESS, SARAH R. RIEDMAN, HENRIETTA A. FRIEDMAN and MELBA PHILLIPS,

Petitioners,

against

THE BOARD OF HIGHER EDUCATION OF THE CITY OF NEW YORK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK

BRIEF FOR RESPONDENTS (a) IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI AND (b) CONSENTING TO GRANTING OF MOTION FOR LEAVE TO USE RECORD IN PRIOR APPEAL, AS SUPPLEMENTED

October 1, 1956

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Petitioners' Motion for Leave to Use Record in Prior Appeal, as Supplemented

We have no objection to consideration of the petition for a writ of certiorari on the basis of the Record in petitioners' prior appeal to this Court (No. 385, October Term, 1954), as supplemented (a) by the Supplemental Record which is being filed in this Court pursuant to petitioners' notice of appeal dated August 31, 1956, and (b) by the papers specified in respondents' Cross-Designation of Record dated September 24, 1956.

Petition for Writ of Certiorari

In the motion which respondents have filed to dismiss petitioners' appeal from the decision of the Court of Appeals rendered on April 22, 1954, and its order of June 8, 1956 denying rehearing, cases and authorities are cited which, we submit, clearly demonstrate that this Court does not have jurisdiction to entertain such appeal and that it should be dismissed.

The cases, authorities and reasoning embodied in the motion to dismiss apply with equal force to this petition for a writ of certiorari, for the purpose of reviewing the order of the Court of Appeals, dated June 8, 1956, denying petitioners a rehearing. We submit that such cases, authorities and reasoning demonstrate with like persuasiveness that this Court is without jurisdiction to review by writ of certiorari the order of the Court of Appeals, dated June 8, 1956, from which petitioners are simultaneously appealing. Accordingly, the matters set forth in respondents' motion to dismiss will not be repeated here. The Court is respectfully referred to such motion to dismiss as presenting the grounds of respondents' opposition to the pe-

tition for a writ of certiorari, and respondents request that they be permitted to incorporate such grounds herein by reference.

For the foregoing reasons, it is respectfully submitted that this petition for a writ of certiorari should be denied.

October 1, 1956

Respectfully submitted,

PETER CAMPBELL BROWN
Corporation Counsel
Attorney for Respondents

SEYMOUR B. QUEL
BERNARD FRIEDLANDER
Of Counsel